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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

8 MICHAEL CLARK,

9 Plaintiff,

10 vs.

11 KAREN SMITH,

12 Defendant.
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Case No. 2:09-cv-02337-PMP-GWF

ORDER

Motion to Strike (#54)

14 This matter is before the Court on Defendant's Motion to Strike Plaintiff's Certification for the
15 Record: A Request for Production of Document: A Request for Discovery (#54), filed December 13,
16 2010.

17 To date, Plaintiff has not responded to this motion and the time for opposition has now passed.
18 LR 7-2(d) states in pertinent part, that "[t]he failure of an opposing party to file points and authorities in
19 response to any motion shall constitute a consent to the granting of the motion." As a result, the Court
20 will grant the present motion. In addition, Local Rule 26-8 states that written requests for discovery
21 should not be filed with the Court. Under this rule, the Court finds that Plaintiff's filing of his request
22 for production was improper. Plaintiff should instead serve his discovery requests directly on
23 Defendant. The discovery request will be stricken from the record.

24 Further, Plaintiff's Amended Complaint (#51) has yet to be screened by the Court and any
25 discovery is premature until a preliminary screening is conducted. Federal courts must conduct a
26 preliminary screening in any case in which a prisoner seeks redress from a governmental entity or
27 officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the Court must
28 identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim

1 upon which relief may be granted or seek monetary relief from a defendant who is immune from such
2 relief. *See* 28 U.S.C. § 1915A(b)(1)-(2).

3 In this case, Plaintiff has apparently been released from custody, and is thus, at this stage of the
4 litigation, no longer a “prisoner.” Nevertheless, the Court finds that it must still conduct a section
5 1915A screening for two reasons. *See Johnson v. Hill*, 965 F.Supp. 1487, 1488 fn. 2 (E.D. Va, 1997).
6 First, Plaintiff was a prisoner at the time he filed this action and at the time he filed his amended
7 complaint (#51). Second, the suit advances concerns Plaintiff had as a prisoner about alleged
8 misconduct by prison officials. By finding that Clark’s suit must undergo a section 1915A screening,
9 the Court “furthers a goal underlying the statute: to control the flood of litigation brought against the
10 country’s prison systems”. *Johnson*, 965 F.Supp. at 1488 fn. 2. As a result, the Court will conduct a
11 preliminary screening of Plaintiff’s Amended Complaint (#51) and will stay discovery until the
12 screening is completed.

13 No discovery may take place until the stay is lifted. Accordingly,

14 **IT IS HEREBY ORDERED** that Defendant’s Motion to Strike Plaintiff’s Discovery Request
15 (#54) is **granted**. The Clerk of the Court shall strike Plaintiff’s “Certification for the Record: A
16 Request for Production of Document: A Request for Discovery” (#53) from the record.

17 **IT IS FURTHER ORDERED** that this action is stayed pending the Court’s preliminary
18 screening of Plaintiff’s Amended Complaint (#51).

19 DATED this 18th day of January, 2011.

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22 GEORGE FOLEY, JR.
23 United States Magistrate Judge
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